

MAY 26 1979

MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1978

No. 78-1397

ALVIN F. MALLERY, JR.,

Petitioner,

versus

**FRANK BLACKBURN, Warden,
Louisiana State Penitentiary,**

Respondent.

**RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF LOUISIANA**

**HARRY F. CONNICK,
DISTRICT ATTORNEY OF
ORLEANS PARISH**

**LOUISE KORNS,
ASSISTANT DISTRICT ATTORNEY
OF ORLEANS PARISH**

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New Orleans, Louisiana 70119
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MAY IT PLEASE THE COURT:

The facts set out in Mallery's petition for certiorari are the same as those the accused himself, without corroboration of any kind, testified to on the witness stand at his trial and are opposed to the facts described by the State of Louisiana's witnesses. In this connection it is relevant to note that no plea of entrapment was ever

filed in this case, and that the jury, after listening to Mallery's claim that he had only wanted to help a suffering friend, brought in a verdict of guilty of distribution of heroin.

State v. Terrebonne, 364 So.2d 1290 (La. 1978), and *State v. Sykes*, 364 So.2d 1293 (La. 1978), referred to in Mallery's petition, see p. 13, involve the same issue as that posed by Mallery's own case, that is, the constitutionality of the mandatory life sentence imposed for sale of heroin by La. R.S. 40:966 B; and all three cases were handed down the same day — November 13, 1978.*

State v. Alvin Mallery and *State v. Carl Sykes*, supra, were both Orleans Parish cases. The State of Louisiana, acting through the Orleans Parish District Attorney, on October 20, 1978, filed with the Louisiana Supreme Court in *Sykes*, then pending on rehearing, and as applicable to *Mallery* and *Terrebonne* also, a certified statement from the Honorable Edwin A. Lombard, Clerk of the Orleans Parish Criminal District Court, showing the number of indictments for the sale of heroin, or possession with intent to distribute heroin, for the years 1975, 1976, 1977, and 1978 (to date). This exhibit, State's Exhibit 3, is an official compilation by the Clerk of Court for the Criminal District Court for the Parish of Orleans of the official court records for all

* A rehearing had been granted in *Sykes*, originally handed down June 19, 1978, on the question of the constitutionality of the mandatory life sentence. See per curiam, 364 So.2d, at 1299.

indictments for sale of heroin, or possession with intent to distribute heroin, as verified by the Clerk of the Criminal District Court for Orleans Parish.

The District Attorney for Orleans Parish believed that these figures were essential for the Louisiana Supreme Court to make an accurate determination of the unquestionable deterrent effect of the mandatory life sentence for the sale of, or possession with intent to distribute, heroin. See La. R.S. 40:966 B. These statistics are an official compilation of official court records and are uncontroverted by any evidence produced by the defense in the *Mallery*, *Sykes*, and *Terrebonne* cases in the Louisiana courts. A certified copy of State's Exhibit 3 is attached hereto.

The Orleans Parish District Attorney also filed in evidence in the Louisiana Supreme Court in the *Sykes* case a newspaper account of a statement by Peter B. Bensinger, administrator of the United States Drug Enforcement Administration, to the effect that because of severe sentences given for drug violations in Louisiana, New Orleans is not a major heroin center. *New Orleans States-Item*, December 12, 1977. A certified copy of State's Exhibit 4, which shows this newspaper account, is also attached hereto.

It must be borne in mind that in those cases in which it might be felt that a life sentence for sale of heroin is unduly harsh, recourse can always be had to the Louisiana Pardon Board, or a commutation of sentence can be sought from the Governor of Louisiana.

It is common knowledge that for punishment to be effective, it must be sure.

In the petition for certiorari herein it is argued that:

"Mallery is indistinguishable from a professional, profiteering distributor of heroin. He is indistinguishable from a career criminal who has been convicted of violating the law on previous occasions. He is indistinguishable from one who acted, not out of sympathy or need, but out of contempt and greed." P. 8.

The State of Louisiana's answer to this contention, if true, is that in order to effectively combat the sale of heroin, motive and similar considerations must be immaterial; it must become known throughout the community that whoever is found guilty of selling this noxious drug will spend the remainder of his life in prison. Stern measures are needed to overcome, or at least to hold at bay, great evils.

CONCLUSION

The State of Louisiana respectfully asks this Honorable Court to deny Alvin Mallery's petition for certiorari, which seeks to invalidate Louisiana's mandatory life sentence for the sale of heroin, and to affirm his conviction and life sentence.

HARRY F. CONNICK,
DISTRICT ATTORNEY OF
ORLEANS PARISH

LOUISE KORNS,
ASSISTANT DISTRICT
ATTORNEY OF
ORLEANS PARISH

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CERTIFICATE

I certify that copies of this Response have been mailed, air mail, postage prepaid, to:

Paul A. Bonin, Esq.
Leonard L. Levenson, Esq.
John J. Lee, Jr., Esq.
International Trade Mart
Number 2 Canal Street
New Orleans, Louisiana 70130
Attorneys for Petitioner

*Mattery v. Blackburn
U.S. Supreme Court No 78-1397*



STATE'S EXHIBIT 3

CRIMINAL DISTRICT COURT
PARISH OF ORLEANS
OFFICE OF THE CLERK OF COURT
EDWIN A. LOMBARD, CLERK
EX-OFFICIO CUSTODIAN OF VOTING MACHINES

2700 TULANE AVENUE
NEW ORLEANS, LA. 70119
504/586-3061

October 17, 1978

Honorable Harry F. Connick
Orleans Parish District Attorney
2700 Tulane Avenue
New Orleans, Louisiana 70119

Dear Mr. Connick:

Pursuant to your request, I am writing to provide certification of the following information based upon official records of the Clerk's Office of Criminal District Court.

Indictments returned by the Orleans Parish Grand Jury and filed in the Clerk's Office for violation of R.S. 40:966(A), Sale of Heroine or Possession with Intent to Distribute, number by year as follows:

	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978 (To Date)</u>
NO. CASES	121	78	26	9
NO. DEFENDANTS	201	108	36	17

Attached please find a monthly breakdown of the above totals as per request.

Sincerely,

Emmett H. Fremaux, Jr.
Emmett H. Fremaux, Jr.
Chief Deputy Clerk

EHF/gjb

Enclosure

STATE'S EXHIBIT 3

SEARCHED INDEXED
SERIALIZED FILED
OCT 19 1978
FBI - NEW ORLEANS
IN our records.
Emmett H. Fremaux, Jr.

Mattley v. Butler
U.S. Supreme Court
No 78-1397

STATE'S EXHIBIT 3

ORLEANS PARISH GRAND JURY
INDICTMENTS filed with the CLERK OF CRIMINAL DISTRICT
COURT for Violations of R.S. 40:966(A)

1975 - 1978

DATE: OCTOBER 17, 1978

		<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>
JANUARY					
Total # cases		11	15	6	0
Total # defendants		21	21	7	0
FEBRUARY					
Total # cases		1	9	0	1
Total # defendants		2	12	0	2
MARCH					
Total # cases		5	2	2	3
Total # defendants		5	2	3	5
APRIL					
Total # cases		8	8	0	0
Total # defendants		14	15	0	0
MAY					
Total # cases		5	2	5	2
Total # defendants		6	4	6	6
JUNE					
Total # cases		15	4	6	1
Total # defendants		24	5	12	1
JULY					
Total # cases		6	8	3	1
Total # defendants		7	9	4	2
AUGUST					
Total # cases		3	8	1	1
Total # defendants		5	9	1	1
SEPTEMBER					
Total # cases		48	5	2	0
Total # defendants		86	6	2	0
OCTOBER					
Total # cases		5	10	0	0
Total # defendants		11	17	0	0
NOVEMBER					
Total # cases		3	4	1	
Total # defendants		4	5	1	
DECEMBER					
Total # cases		11	3	0	
Total # defendants		16	3	0	
TOTAL # CASES		121	78	26	9
TOTAL # DEFENDANTS		201	108	36	17

STATE'S EXHIBIT 3

appears in our records.

Franklin

OF COURT

Ward's (copy) October 1978

A TRUE COPY

Ward
Clerk of Court

Matter of Blackburn
U.S. Supreme Court
No. 78-1397

Tough sentences cutting drug action

By MARJORIE ROEHL
LH/c 5/12/77

Because of the severe sentences given for drug violations in Louisiana, New Orleans is not a major heroin center, says Peter B. Bensinger, administrator of the U.S. Drug Enforcement Administration.

"Drug traffic in heroin may call for a life sentence now," Bensinger said yesterday. "That's important. Nationally, one third of those convicted for drug violations are sentenced to three years or less. One of three narcotics violators is only put on probation. If the violator is out of jail before the court papers are dry, that's a big problem." He also praised Louisiana and local enforcement efforts.

Bensinger was here for the 28th session of the Franco-American-Canadian Intergovernmental Committee on Narcotic Control, which met at the Hilton Hotel.

This committee developed the strategy and coordinated operations to break the "French connection" that had supplied the bulk of heroin to North America before 1972. Since 1974, no heroin from France has been seized in the U.S.

The Drug Enforcement Administration considers heroin the most dangerous drug in common abuse today. However, its use seems to have stabilized, Bensinger said. "Deaths among users are down 30 percent. In the past three months, 90 people a month have died — a real decrease from 15 months ago when the average was 140 to 150 a month."

In 1977, six tons of heroin entered the United States — down by a ton to a ton and a half. Also, the heroin purity table is at its lowest in years, which means it has to be cut more often with other substances.

He called the job of the drug undercover agent "the most dangerous, difficult and complex in the criminal justice system. In the past four years, four agents have been killed in the line of

duty. That is because the profits are so great. A kilo, or 2.2 pounds of heroin, is worth more than \$1.5 million."

The department is now giving more attention to the Gulf Coast from Galveston to Mobile, Bensinger said, because the area is ideal for smugglers. "There are so many bayous into the marshes and the New Orleans is one point for transshipment of drugs to other places. But drug dealers are beginning to divert their deliveries to as far away as Maine," he said.

HE HAD WORDS of praise for the Mexican government, saying it has destroyed 35,000 fields of poppies. He said Southeast Asia is still a problem source, however.

While cocaine is growing in popularity, Bensinger said, "CP, a hallucinogenic that is easy to manufacture and is legitimately used to tranquilize animals, is the latest development on the drug scene. It has the unpredictable qualities of LSD, which it is replacing, and the DEA is seeking tighter controls on its use, he said.

Maurice Bouvier, central director of the French Judicial Police, said his country is more concerned now with armed robberies than with drugs, although we still keep an attentive eye on the Marseilles region."

J. Paul Drapeau, deputy commissioner of criminal operations for the Royal Canadian Mounted Police, said he believes drug abuse in Canada may be on the wane. "However, dangerous chemical drugs are being manufactured in Canada and taken across your border. This year, we found 20 PCP laboratories," he said.

During the meeting, Bensinger said, the "profile" and "method of operation" of drug couriers were discussed. "Some do fit a pattern," he admitted. "For instance, if someone buys a ticket from New Orleans to San Diego, pays cash and only stays out there an hour, we may presume he did not go to do an interview with the media."

News is our friend.

Frank J. Howard